

In the Matter of the Compensation of
ISA DEAN, Claimant

WCB Case No. 21-01998

ORDER ON REVIEW

Edward J Hill, Claimant Attorneys

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Reviewing Panel: Members Curey and Ousey. Member Curey concurs.

The self-insured employer requests review of Administrative Law Judge (ALJ) Cordes's order that found that claimant's medical services claim for chiropractic treatment and massage therapy for her cervical and bilateral shoulder conditions was causally related to her work activities. On review, the issue is medical services. We reverse.

FINDINGS OF FACT

In September 2018, claimant, a Program Coordinator at a library, began receiving chiropractic care with Dr. Pelley for a low back injury. (Ex. 1). Dr. Pelley initially noted a "flare up" in claimant's neck and upper back "from spending more time in bed." (*Id.*)

On November 17, 2018, Dr. Pelley recommended claimant use a sit-to-stand work station, opining that claimant's neuromusculoskeletal complaints were regularly aggravated by periods of prolonged sitting in the work chair she was using. (Ex. 4A).

On October 31, 2019, a prior ALJ's order upheld a denial for a 2018 occupational disease claim for bilateral shoulder strains. (Ex. 5E). The prior ALJ's order also set aside the employer's denial of an occupational disease claim for a low back strain. (*Id.*)

On November 14, 2019, claimant began treating with Dr. Perkins, a Family Medicine physician, via phone appointment. (Ex. 5G). Claimant noted that she was experiencing upper back discomfort and pain in her left arm and thumb, which she attributed to her working conditions. (Ex. 5G-2). Dr. Perkins diagnosed bilateral shoulder, arm, and upper back discomfort, with symptoms that started "after change at work." (Ex. 5G-3).

On November 27, 2019, claimant filed a separate claim for her shoulder, arms, neck, hips, and back. (Ex. 7). Claimant alleged that her pain occurred as a result of job requirements, including side-by-side technical assistance, holding tablets/phones, and working on laptops and computers. (Exs. 6, 7).

In December 2019, claimant began receiving massage therapy for a lumbar strain. (Ex. 8D).

On January 3, 2020, Dr. Perkins recommended that claimant take time off work for two weeks, from December 27, 2019 through January 11, 2022. (Ex. 8E). Dr. Perkins attributed this work release to “significant back, shoulder, neck, and arm pain related to poor ergonomics at her work place.” (*Id.*)

On January 11, 2020, Dr. Perkins requested that claimant receive massage and physical therapy for “cervicalgia” (neck pain). (Exs. 11, 12, 13). Claimant received massage therapy from January 2020 through March 2021. (Exs. 27A, 28A, 29B, 30A, 32C, 32E, 36B, 37B, 38D, 45A, 46A, 47A, 47B, 82A-47, 82A-48, 82A-49, 82A-50).

On January 20, 2020, claimant began receiving chiropractic treatment for thoracic pain, bilateral shoulder pain, and neck pain. (Ex. 16). Dr. Ziskovsky, a chiropractor, diagnosed thoracic region pain and pain in the right and left shoulders. (Ex. 16-2). Claimant continued chiropractic treatment through March 2021. (Exs. 23, 37, 38, 38A, 39, 40, 43, 57, 60, 82A-17, 82A-21).

On January 22, 2020, Dr. Broock, an orthopedic surgeon, examined claimant at the request of the employer. (Ex. 18). He opined that claimant did not have a consistent, correlating subjective history or objective physical examination findings. (Ex. 18-21). Thus, Dr. Broock was not able to validate any orthopedic or neurological diagnoses for claimant’s claimed bilateral shoulder, arm, neck, bilateral hip, and back conditions. (*Id.*) Accordingly, he stated that the question of whether claimant’s occupational exposures were the major contributing cause of any of the diagnoses he identified was “not applicable.” (*Id.*) Dr. Brook opined that the only condition he considered related to claimant’s occupational exposures, that of the accepted lumbar strain, was medically stationary. (Ex. 18-22).

On January 28, 2020, claimant’s November 2019 claim was accepted for a disabling lumbar strain. (Ex. 22).

On February 24, 2020, Dr. Perkins did not agree with Dr. Broock's January 2020 assessment. (Ex. 36-1). Finding claimant's history and physical examination to be consistent, Dr. Perkins believed that ergonomics at work were the major contributing cause of claimant's bilateral shoulder, neck, and back pain. (Ex. 36-2).

On May 5, 2020, claimant requested acceptance of a right shoulder strain, left shoulder strain, and segmental and somatic dysfunction of the cervical region as new/omitted medical conditions related to the November 2019 claim. (Ex. 52). On May 16, 2020, claimant also requested acceptance of a right rotator cuff capsule sprain as a new/omitted medical condition related to the November 2019 claim. (Ex. 54).

On June 23, 2020, Dr. Cunningham, an orthopedic surgeon, examined claimant at the request of the employer. (Ex. 56). She opined that claimant had no objective evidence of a right or left shoulder strain or segmental and somatic dysfunction of the cervical spine. (Ex. 56-14, -15). Reasoning that there was no combining with claimant's preexisting conditions and occupational exposures, Dr. Cunningham concluded that claimant's employment conditions were not the major contributing cause of the need for treatment and disability of her shoulder and neck conditions. (Ex. 56-15).

On July 6, 2020, the employer denied claimant's new/omitted medical condition claim for right shoulder strain, left shoulder strain, and segmental and somatic dysfunction of the cervical region, asserting that the conditions did not arise out of her work activities on either an injury or occupational disease basis. (Ex. 58-1). On July 15, 2020, citing the same reasoning, the employer denied claimant's request for acceptance of the right rotator cuff capsule sprain. (Ex. 61-1).

On July 18, 2020, Dr. Cunningham opined that claimant's subjective symptoms and objective findings were not consistent with a right rotator cuff capsule sprain and the medical records displayed inconsistent findings in regard to her right shoulder symptoms. (Ex. 62-2). She explained that, prior to November 2019, claimant was not working for prolonged periods that could sprain her right rotator cuff capsule. (Ex. 62-3).

On November 13, 2020, Dr. Cunningham authored an addendum to her June 2020 examination report. (Ex. 65). Dr. Cunningham reviewed additional records, including records from Dr. Perkins, physical therapy records, and chiropractic

records. (Ex. 65-1-2). She opined that the additional medical records did not impact her June 2020 opinion, noting that claimant had multiple musculoskeletal complaints without significant objective pathology noted on imaging to explain ongoing symptomatology and without appropriate mechanism to cause the diffuse somatic symptomatology. (Ex. 65-3).

On November 30, 2020, Dr. Perkins and PA Bourret signed a concurrence report agreeing that claimant had “objective findings” consistent with bilateral shoulder strains and segmental and somatic dysfunction of the cervical region. (Ex. 65A-2, -3, -6). They agreed that claimant’s segmental and somatic dysfunction of the cervical region could have resulted from muscle spasms attempting to stabilize an unstable situation in the cervical spine of spasm and hypertonicity in muscle groups “torqueing” the cervical spine in an abnormal manner. (Ex. 65A-7). They opined that both scenarios were “plausible” given the “poor ergonomics” of claimant’s work stations and the “awkward postures” she was required to assume as a result of the ergonomics. (Ex. 65A-7,-8). Therefore, they concluded that claimant’s work exposure was within reasonable medical probability the major cause of claimant’s “cervical problems.” (Ex. 65A-9). They also opined that the major causative factor of the claimed “chronic problems” of right shoulder strain, left shoulder strain, and segmental and somatic disfunction of the cervical region (which had taken a “significant amount of treatment to address”) were the awkward postures claimant had to maintain at work due to the poor ergonomics of her work station. (*Id.*)

In that concurrence letter, claimant’s attorney asked Dr. Perkins and PA Bourret if they were aware of claimant’s 2019 motor vehicle accident (MVA). (*Id.*) They responded that they were aware of the accident, but were not aware of any medical evidence that the accident had significantly exacerbated the symptoms of the claimed conditions. (Ex. 65A-10). They then opined that whatever the contribution of the MVA, the medical records dating back to 2013 showed a “long history” of claimant’s work causing and worsening the “conditions at issue.” (Ex. 65A-10).

On March 3, 2021, Dr. Perkins referred claimant to chiropractic care and massage therapy for neck pain. (Exs. 69A, 69B).

On March 15, 2021, the Managed Care Organization (MCO), on behalf of the employer, disapproved therapeutic massage and application of low energy heat directed at claimant’s neck pain, on the basis that the services were not medically necessary. (Ex. 70-1).

On March 26, 2021, the MCO, on behalf of the employer, disapproved chiropractic care directed at claimant's neck pain and strain of muscle, fascia, and tendon of the lower back, as not medically necessary. (Ex. 72-1). It explained that claimant's accepted lumbar strain had reached maximum medical improvement and no further treatments were recommended. (Ex. 72-2).

On March 29 and April 8, 2021, claimant appealed the MCO's disapprovals of massage therapy and chiropractic treatment. (Exs. 77, 79). The MCO upheld its original disapprovals. (*Id.*)

On July 17, 2021, Dr. Smark, an orthopedic surgeon, examined claimant on behalf of the employer. (Ex. 84A). Dr. Smark noted that claimant reported that she injured her lumbar spine in September 2018, prompting ongoing upper body, shoulder, neck, and back pain. (84A-2). Dr. Smark noted that claimant had received ergonomic adjustments and ergonomic techniques, which claimant attributed to her 2019 "re-aggravat[ion]" of her symptoms, which she described as "developing new symptoms in her arm and neck and worsening low back pain." (*Id.*)

Claimant reported to Dr. Smark that she had a 2005 MVA, and "no other injuries." (Ex. 84A-3). She also reported a lumbar strain in September 2018 and back, shoulder, neck, and arm pain in November 2019. (*Id.*) In his review of the records, Dr. Smark noted a November 27, 2019, Multnomah County Incident and Accident Analysis report. (84A-10). In addition, he stated that he disagreed with some of the treating physicians who had reported "subluxations." Dr. Smark explained that a subluxation is a traumatic condition involving spinal dissociation typically resulting from a high-speed energy injury such as a car accident which can result in spinal injuries and neurologic dysfunction. (Ex. 84A-18). Because there was no objective evidence of such an accident, Dr. Smark did not believe that claimant had a subluxation. (*Id.*) He also determined that claimant sustained "no injury" from her workplace. (*Id.*)

On July 20, 2021, Dr. Hippensteel evaluated claimant on behalf of the employer regarding continued treatment for her low back pain. (Ex. 84). Dr. Hippensteel noted that claimant had a history of a MVA in 2005 that required 12 months of treatment and resulted in chronic residuals in the neck, making it hard to look down. (Ex. 84B-12). There was no mention of claimant's 2019 car accident in the history. (*Id.*) Dr. Hippensteel noted the 2019 car accident only when reviewing the November 21, 2020, letter from claimant's attorney. (Ex. 84B-20).

On November 5, 2021, Dr. Perkins agreed that there was no reason to amend her November 30, 2020, opinion. (Ex. 88-4). She opined that the disputed “additional treatment” was caused in major part by the conditions of “right shoulder strain, left shoulder strain[,] and segmental and somatic disfunction of the cervical region.” (*Id.*) She further opined that physical therapy, massage therapy, and chiropractic care were reasonable and necessary treatments for claimant’s compensable injuries. (Ex. 88-5).

CONCLUSIONS OF LAW AND OPINION

Finding the opinion of Dr. Perkins to be persuasive, the ALJ concluded that the disputed medical services were causally related to claimant’s work activities.

On review, the employer contends that Dr. Perkins’s opinion does not establish that the disputed medical services were for or directed to a condition caused in material part by claimant’s employment conditions.¹ Based on the following reasoning, we reverse the ALJ’s order.

ORS 656.245(1)(a) provides, in part:

“For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires * * *.”

The “compensable injury,” as referenced in its first use in the first sentence of ORS 656.245(1)(a) means the “work accident.” *See Garcia-Solis v. Farmer’s Insurance Co.*, 365 Or 27, 43 (2019). Thus, to establish that the disputed medical services are compensable, claimant must establish that the requested medical services are for a condition that was caused in material part by the work accident. *See* ORS 656.245(1)(a); *Garcia-Solis*, 365 Or at 37; *Kenneth J. Yuill*, 74 Van Natta 731, 733 (2022).

¹ On review, the employer also contends that its previous denials of claimant’s new/omitted medical condition claims for bilateral shoulder and cervical spine conditions preclude a finding that the disputed medical services are for or directed to conditions caused by claimant’s employment conditions. Based on our determination, we need not resolve the employer’s preclusion argument. *See Heidi Larson*, 74 Van Natta 284, 287 n 1 (2022); *Sharon R. Caron*, 54 Van Natta 705, 705-06 (2002).

This claim presents a complex medical question that must be resolved by expert medical opinion. *See Barnett v. SAIF*, 122 Or App 279, 282 (1993); *Caitlin A. Stanphill*, 73 Van Natta 856, 856 (2021). We give more weight to opinions that are well reasoned and based on complete information. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003); *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Jayden S. Smytherman*, 74 Van Natta 602, 604 (2022).

Here, Dr. Perkins is the only physician who supports compensability of the denied services. He opined that the disputed massage therapy and chiropractic care services were for claimant's bilateral shoulder and cervical conditions that were caused in major part by her work exposure. (Ex. 88-4, -5). For the following reasons, we find Dr. Perkins's opinion unpersuasive.

First, we find that, on multiple occasions, claimant failed to disclose a previous 2005 MVA to her medical providers. (Exs. 18-8, 18-20, 36A, 38A). When she did disclose the 2005 MVA accident, she sometimes endorsed an "injury to the neck," and sometimes noted that the 2005 MVA "did not lead to any injuries." (Exs. 56-3, 84B-4). Additionally, claimant stated that her neck and shoulder pain began in 2018, yet there are medical records of complaints and treatment for claimant's neck and bilateral shoulders dating to at least 2013. (Exs. 18-9, 56-11).

Because of these inconsistencies and the lack of disclosure, we find claimant's reported history regarding her shoulder and neck symptoms to be unreliable. *See Hilda B. Becerra-Gomez*, 71 Van Natta 1196, 1201 (2019) (discounting the claimant's inconsistent testimony); *Ryan E. Jones*, 63 Van Natta 2367, 2371 (2011) (the claimant's testimony that was inconsistent with the medical records was unreliable).

As a result of the above-mentioned inconsistencies and claimant's unreliability, we find Dr. Perkins opinion, which relied on claimant's history and her description of the onset of her symptoms, to be unpersuasive. *See Miller v. Granite Const. Co.*, 28 Or App 473, 476 (1977) (physician's opinion that was based on an inaccurate history was unpersuasive); *Rocio C. Casasola*, 69 Van Natta 893, 896 (2017) (physician's opinion based on the claimant's unreliable history was unpersuasive).

Additionally, Dr. Perkins did not explain why claimant's symptoms, which she attributed to claimant's work activities, did not dissipate after a significant reduction of claimant's hours or work station modifications. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion).

Finally, we acknowledge that Dr. Perkins signed a November 2020 concurrence stating that she knew about claimant's August 2019 MVA, but was not aware of any medical evidence that the accident had significantly exacerbated claimant's symptoms of the claimed conditions. (Ex. 65A-10). Yet, Dr. Perkins never recorded a history including claimant's 2019 MVA, nor did she explain why the disputed medical services were causally related to the work activities as opposed to the 2019 MVA or other potential causes (including claimant's prior neck pain). Under such circumstances, we do not consider Dr. Perkins's conclusory statement that she knew of claimant's 2019 MVA sufficient to constitute an explanation as to why the accident had no effect on Dr. Perkins's "causation" opinion.

Therefore, we find her opinion to be unpersuasive and insufficient to establish the requisite causal relationship between the work activities and the disputed medical services. *See Moe*, 44 Or App at 433; *Sara R. Lohala*, 71 Van Natta 1203, 1208 (2019) (physician's conclusory opinion, without additional explanation, was insufficient to find the disputed medical services compensable).²

There are no other opinions persuasively supporting a causal relationship between the work activities and the chiropractic and massage therapy services.³ Accordingly, for the reasons expressed above, the disputed medical services are not causally related to claimant's work activities. *See* ORS 656.245(1)(a); ORS 656.266(1). Consequently, we reverse.

ORDER

The ALJ's order dated April 20, 2022, as reconsidered on June 9, 2022, is reversed. The disputed medical services for chiropractic treatment and massage therapy are not causally related to claimant's work activities. The ALJ's "contingent" \$9,000 attorney fee and cost awards are also reversed.

² In doing so, we acknowledge Dr. Perkins's status as the attending physician concerning claimant's medical services. However, we consider the abovementioned deficiencies to be sufficient reasons to discount her opinion. *See Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001); *Brittany Deyo-Bundy*, 72 Van Natta 427, 436 (2020) (discounting attending physician's opinion that was based on incomplete records and that did not consider relevant information).

³ Because Dr. Perkins's opinion is the only opinion supporting claimant's burden of proving that the disputed medical services are causally related to her work activities, it is unnecessary for us to address any contrary medical opinions. *See Jennifer Jacobs*, 73 Van Natta 573, 576 n 1 (2021) (unnecessary to address the persuasiveness of contrary medical opinions in the absence of a persuasive medical opinion sufficient to meet the claimant's burden of proof); *Jennifer L. Green*, 71 Van Natta 1288 (2019), *recons*, 72 Van Natta 121, 124 (2020) (same).

Entered at Salem, Oregon on April 26, 2023

Member Curey concurring.

I agree that, on this record, claimant has not established that the disputed medical services for chiropractic treatment and massage therapy are causally related to claimant's work activities. However, I write separately to distinguish this case from *Garcia-Solis v. Farmers Ins. Co.*, 365 Or 26 (2019).

ORS 656.245(1)(a) provides, in part:

“For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires * * *.”

In *Garcia-Solis*, the Supreme Court determined that medical services under ORS 656.245 for an unclaimed, unaccepted condition can be the responsibility of a carrier if the medical services were due in material part to the work accident. *Id.* at 38.

However, in the present case, the conditions to which the disputed medical services were directed were claimed and denied by the employer. Moreover, the employer's denial has been upheld by previous ALJ's decision and affirmed by a final Board order. *See Isa Dean*, WCB Case No. 20-04170.

Therefore, because the disputed medical services claim is derived from a condition that has been denied, I find this case distinguishable from *Garcia-Solis*. Accordingly, I concur. Consequently, for this additional reason, I would find that the claimed medical services are not causally related to the work injury.